

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY) MDL NO. 1456
AVERAGE WHOLESALE PRICE)
LITIGATION) CIVIL ACTION: 01-CV-12257-PBS
)
) Judge Patti B. Saris
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-A-Care of the Florida Keys,) Chief Magistrate Judge Marianne B. Bowler
Inc. v. Abbott Laboratories, Inc.,)
No. 06-CV-11337-PBS)

**ABBOTT LABORATORIES, INC.'S MOTION FOR LEAVE TO
FILE REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL
EVIDENCE WITHHELD UNDER THE DELIBERATIVE PROCESS PRIVILEGE**

Abbott Laboratories, Inc. ("Abbott") filed its Motion to Compel Evidence Withheld Under the Deliberative Process Privilege, and accompanying memorandum in support, on December 27, 2006. Abbott's memorandum outlined the great weight of authority restricting the Government's ability to withhold potentially relevant information under guise of the deliberative process privilege, while at the same time putting its knowledge and deliberations at issue by seeking affirmative judicial relief. The United States did not address Abbott's authority and arguments in its opposition to Abbott's motion, filed January 10, 2007. Instead, the Government argues that Abbott's motion is not yet ripe, contending the Government "has yet to assert the deliberative process privilege" in this case. Gov't Mem. at 2.

Abbott respectfully seeks leave of Court to file the attached Reply Memorandum in Support of its Motion to Compel Evidence Withheld Under the Deliberative Process Privilege. Abbott's reply memorandum addresses the ripeness issue raised for the first time in the Government's response by, among other things, enumerating the numerous occasions where the Government has, in fact, asserted the deliberative process privilege in this case. Abbott's reply

memorandum also addresses the consequences of the Government's deliberate failure to respond on the merits to Abbott's motion to compel.

Dated: January 25, 2007

Respectfully submitted,

/s/ R. Christopher Cook

James R. Daly
Tina M. Tabacchi
Brian J. Murray
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585

R. Christopher Cook
David S. Torborg
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Facsimile: (202) 626-1700

Counsel for Defendant Abbott Laboratories, Inc.

CERTIFICATE OF SERVICE

I, David S. Torborg, an attorney, hereby certify that I caused a true and correct copy of the foregoing ABBOTT LABORATORIES, INC.'S MOTION FOR LEAVE TO FILE REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL EVIDENCE WITHHELD UNDER THE DELIBERATIVE PROCESS to be served on all counsel of record electronically by causing same to be posted via LexisNexis, this 25th day of January, 2007.

/s/ David S. Torborg

David S. Torborg